

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAR - 7 2008

COURT OF APPEALS
DIVISION TWO

APRIL W.,

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY,
AMBER W., and LUKE W.,

Appellees.

2 CA-JV 2007-0082

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16242300

Honorable Virginia C. Kelly, Judge

AFFIRMED

Linda R. Herzog

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By William V. Hornung

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

E S P I N O S A, Judge.

¶1 In September 2007, the juvenile court terminated the parental rights of April W. to twins Amber and Luke, born in July 2006, based on April's mental illness and the fact that her parental rights to another child had been terminated within the preceding two years. *See* A.R.S. § 8-533(B)(3), (B)(10).¹ April challenges the sufficiency of the evidence to support the termination order. We affirm.

¶2 We will not disturb an order terminating a parent's rights "unless it is clearly erroneous," meaning, "no reasonable evidence supports" the findings of fact upon which the order is based. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). On appeal, we view the facts in the light most favorable to sustaining the juvenile court's order. *Id.* ¶ 13. As April correctly asserts, a parent's rights can only be terminated if at least one of the grounds set forth in § 8-533(B) is proved by clear and convincing evidence, *see* A.R.S. §§ 8-537(B) and 8-863(B), and the evidence establishes by a preponderance that it is in the child's best interests for the parent's rights to be severed, *see Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶3 The record shows that April has suffered from mental illness for years. Based to a large degree on her mental health issues, including a diagnosis of schizophrenia, April's parental rights to her son Estephon, born in October 2003, were terminated in October 2005. April's parental rights to two other children were also severed: William in April 2004 and a daughter in 2001. When Amber and Luke were born in the summer of 2006,

¹The court terminated the parental rights of the children's father on August 13, 2007.

Child Protective Services (CPS) immediately intervened. April admitted to a CPS caseworker that she had not been taking her anti-psychotic medication. When she was asked whether she had been using illegal drugs, she responded: “As you know, all humans on the face of the earth use marijuana and methamphetamine.” CPS took Amber and Luke into custody and placed them in foster care.

¶4 The Arizona Department of Economic Security (ADES) filed a dependency petition, and the twins were adjudicated dependent in November 2006. At that time, the juvenile court found April “has a history of mental health problems for which she does not consistently take medications and . . . she has used illegal drugs in the past year.” April did not challenge the adjudication. Immediately after the twins were adjudicated dependent, ADES filed a motion to terminate reunification services and asked the court to set the matter for a permanency hearing on the ground that April had failed to address the issues that had resulted in the termination of her rights to Estephon and William. After a permanency hearing in May 2007, the court changed ADES’s case plan goal from reunification to severance and adoption and directed ADES to file a motion to terminate April’s parental rights to Amber and Luke, which it did shortly thereafter.

¶5 On September 24, 2007, after a contested severance hearing, the juvenile court terminated April’s parental rights to Amber and Luke. In its minute entry, the court reviewed the history of the case and April’s involvement with ADES over the years. The court entered thorough findings of fact related to both statutory bases for terminating April’s

rights and to the court's conclusion that termination of April's parental rights was in the children's best interests.

¶6 Section 8-533(B)(10) provides that a parent's rights may be severed if "the parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause." April concedes her parental rights to another child had been terminated within the two years preceding the order terminating her rights to Amber and Luke. She contends only that there was insufficient evidence she is currently unable to discharge her parental responsibilities. In support of her contention, however, she relies solely on her own testimony at the severance hearing that she loves the children, that the children "are in good hands," and that, while she recognizes she is "not level in [her] head" when she does not take her medication, she was taking the medication at the time of the hearing. The record overwhelmingly supports the court's termination of her parental rights on this ground.

¶7 April's history of mental illness is lengthy and has not improved over time. She has been hospitalized over sixty times for mental illness, including recently in June and November 2006 and March 2007. As the court correctly found, mental illness was one of the bases for the court's October 2005 termination of April's parental rights to Estephon. The court noted that, in the termination order involving Estephon, it had found there were reasonable grounds to believe April's condition would continue for a prolonged and indeterminate period of time and that she "likely could not care for herself," much less a

child. The court also pointed out that in the order relating to Estephon it had found as follows: “Even with the assistance of the case manager, case plan services, mental health care and other services, [April] could not achieve the stability needed to discharge her parental responsibilities to Estephon.” As the court additionally noted, April’s parental rights to William had been terminated in 2004.

¶8 The juvenile court also relied on and summarized the reports and testimony of psychologist Michael German.² German had evaluated April in November 2002, November 2004, and March 2007. He diagnosed her as suffering from schizophrenia that is poorly controlled by medication, which April often neglects to take. He opined that her mental illness is chronic and severe and that her prognosis is poor. German characterized April as a “good, gentle soul in a lot of ways,” a person who should be treated with compassion, but he concluded she should not be provided with additional reunification services because her condition had remained unchanged; she simply would not be able to parent a child. German testified further that he had seen April a week earlier, on March 15, 2007, and although she appeared quite healthy and seemed to be functioning relatively well, she was, nevertheless, delusional and still hallucinating. April herself testified at the severance hearing that she sometimes failed to take her medication and that when that

²German had testified at the March 19, 2007, hearing on ADES’s motion to terminate reunification services. The parties agreed the juvenile court could consider his testimony in ruling on the motion to terminate April’s parental rights.

happened, she did not feel “level.” She added that she “didn’t think [she]’d do anything harmful that would harm [her] children.”

¶9 The record is replete with evidence that April “has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.” § 8-533(B)(10). The fact that she loves her children does not negate the sufficiency of the evidence to support termination of her parental rights on this ground.

¶10 April also challenges the juvenile court’s finding that termination of her parental rights to Amber and Luke was in the children’s best interests. But again, the record contains reasonable evidence to support this and related factual findings.³ The court recognized that April will not be able to parent Amber and Luke in the near future, if ever. It also noted that the foster parents with whom the children had been placed wished to adopt them. The court added that the foster parents were meeting the children’s needs, the home was “safe and appropriate,” and “[e]ven if the current foster parents were unable to go forward with the adoption, [the children] are adoptable.” *See Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004).

¶11 Because we find ample evidence to support the court’s termination of April’s parental rights pursuant to § 8-533(B)(10), we need not address April’s arguments relating

³The caseworker testified that although the children were “in a fost-adopt placement” together, even if the foster parent ultimately did not adopt the children, severance of April’s parental rights and adoption of the children nevertheless was in their best interests.

to the termination of her rights pursuant to § 8-533(B)(3). *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000). For the reasons stated, we affirm the juvenile court's order terminating April's parental rights to Amber and Luke.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge